

MAY 02 2005

Docket No. 05-35264

FILED 5-2-5
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IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RANCHERS CATTLEMEN
ACTION LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,

Plaintiff – Appellee,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, Animal and Plant
Health Inspection Service, et al.,

Defendants – Appellants

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Appeal from D.C. No.
CV-05-06-BLG,
District of Montana, Billings

**RANCHERS CATTLEMEN
ACTION LEGAL FUND
UNITED STOCKGROWERS
OF AMERICA'S OPPOSITION
TO MOTIONS FOR LEAVE
TO FILE *AMICUS* BRIEFS
AND MOTION TO STRIKE
AMICUS BRIEF OF TYSON
FOODS, INC.**

Plaintiff-Appellee Ranchers Cattlemen Action Legal Fund United
Stockgrowers of America ("R-CALF USA") hereby opposes the Motions for Leave
to File Briefs as *Amici Curiae* filed by the following parties: 1) National
Cattlemen's Beef Association, American Farm Bureau Federation, National Pork
Producers Council, et al. ("NCBA"); 2) American Meat Institute, North American

Meat Processors, Southwestern Meat Association, Eastern Meat Packers Association, American Association of Meat Processors, National Restaurant Association, and United Food and Commercial Workers (collectively referred to as “AMI”); 3) Easterday Ranches, Inc. (“Easterday”); 4) Pioneer, Inc. (“Pioneer”); 5) Government of Canada; 6) Alberta Beef Producers (“ABP”); 7) Canadian Cattlemen’s Association (“CCA”); and 8) the Camelid Alliance, et al. (“Camelid”). In addition, R-CALF USA moves to strike, pursuant to Circuit Rule 28-1, the *amicus* brief filed by Tyson Foods, Inc. (“Tyson”).¹ (Hereinafter these parties will be referred to collectively as “*Amici Curiae*,” and the eight proposed *amicus* briefs plus Tyson’s brief will be referred to collectively as “the proposed *amicus* briefs.”)

An *amicus* brief must state: (1) the movant’s interest; and (2) the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case. Fed. R. App. P. 29(b). Nine *Amici Curiae* submitted briefs to this Court that generally support reversal of the District Court’s order granting the preliminary injunction. These briefs consist of over 200 pages, restating the

¹ Tyson represented that it had obtained the consent of all parties and so did not file a motion for leave to file its *amicus* brief. There apparently was a misunderstanding about whether R-CALF USA provided its consent, but even if R-CALF USA had consented to the filing of an *amicus* brief by Tyson, that would not prevent R-CALF USA from moving to strike Tyson’s brief, pursuant to Circuit Rule 28-1 and Fed. R. App. P. 29 and Circuit Rule 29-1, in light of the fact that Tyson’s brief as filed largely duplicates USDA’s brief and contributes to the multiplicity of proposed *amicus* briefs presenting similar arguments by interlocking entities, as described below.

arguments made by appellant the United States Department of Agriculture, et al. (“USDA”) as well as each other. These briefs are inconsistent with Fed. R. App. P. 29 and Circuit Rule 29-1 and should not be allowed.

Since proposed *amici* have failed to follow the letter and spirit of the rules, the simplest resolution would be for this Court to deny all eight motions for leave to file *amicus* briefs and to strike Tyson’s brief, since there is so much duplication among all nine proposed *amicus* briefs and between the *amicus* briefs and the brief of USDA. This would put the burden where it should be, on the proposed *amici*. If the *amicus* briefs are allowed, R-CALF USA requests that the *Amici Curiae* (or some of them) be directed to file a single brief, and that R-CALF USA be allowed to submit a supplemental brief in response. In addition, if the Court nevertheless grants Easterday’s or AMI’s motion for leave to file an *amicus* brief, the Court should strike the documents attached to their briefs, pursuant to Cir. Rule 28-1.

I. The Proposed *Amicus* Briefs Are Duplicative.

The traditional role of an *amicus curiae* is to assist the court with a case in which there is general public interest, to supplement the work of counsel and to draw the court’s attention to law not previously raised. *Miller-Wohl Co., Inc. v. Commissioner of Labor*, 694 F.2d 203, 204 (9th Cir. 1982) (*per curiam*). Federal Rule of Appellate Procedure 29 sets forth parameters for filing an *amicus* brief and “is designed to limit the scope and volume of filings: ‘[A]n *amicus* brief is

supplemental It should treat only matter not adequately addressed by a party.’” *Abu-Jamal v. Horn*, 2000 WL 1100784 at *5 (E.D. Pa. 2000) (Aug. 7, 2000) (quoting Fed. R. App. P. 29(d) Adv. Comm. Notes to 1998 Amend.). Circuit Rule 29-1 also is intended to ensure that the scope of *amicus* briefs is constrained:

The filing of multiple *amici curiae* briefs raising the same points in support of one party is disfavored. Prospective *amici* are encouraged to file a joint brief. Movants are reminded that the court will review the *amicus curiae* brief in conjunction with the briefs submitted by the parties, so that *amici* briefs should not repeat arguments or factual statements made by the parties.

Amici who wish to join in the arguments or factual statements of a party or other *amici* are encouraged to file and serve on all parties a short letter so stating in lieu of a brief. The letter shall be provided in an original and three copies.

Circuit Advisory Committee Note to Rule 29-1.

The Advisory Committee Notes to Fed. R. App. P. 29 refer to Sup. Ct. R.

37.1, which states:

An *amicus curiae* brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court. An *amicus curiae* brief which does not serve this purpose of simply burdens the staff and facilities of the Court and its filing is not favored.

In this case, both of the Court and the parties would be burdened by the excessive, overlapping, and redundant briefs proposed the filed by proposed *Amici Curiae*.

The briefs largely restate arguments already made in USDA’s brief, as described

below. *See Nat'l Org. for Women v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000) (Court of Appeals will never allow the filing of an amicus curiae brief that, in essence, merely duplicates the brief of a party).

A. Summary of USDA's Arguments and Factual Statements

USDA first argues that there is no basis for setting aside the rule and the rule is fully supported by the record. USDA Br. at 20-43. In supporting this argument, USDA makes four general points. First, USDA states that an agency is entitled to deference during the rulemaking process. USDA Br. at 20-22. Next, USDA claims that based on the record and the mitigation measures in place, USDA engaged in a comprehensive analysis of the risks. USDA Br. at 22-27. USDA then argues that the total ban on Canadian cattle and beef imports is not necessary to prevent dissemination of the disease because Canada has implemented the requisite mitigation measures. USDA Br. at 27-29. Finally, USDA asserts that the District Court substituted its judgment for that of the Secretary and ignored the explanations and data in the rule and administrative record. USDA Br. at 29-43.

USDA alleges that the rulemaking satisfied the requirements of the Regulatory Flexibility Act and that the adoption of the rule did not violate the National Environmental Protection Act. USDA Br. at 43-58.

The final argument made by USDA is that the preliminary injunction is not required to protect the interests of R-CALF and the public. USDA Br. at 58.

USDA states that there have not been any probable or confirmed cases of vCJD from consuming Canadian beef and that evidence indicates that there is a “species barrier” that could protect humans from illness due to BSE. USDA Br. at 58.

B. National Cattlemen’s Beef Association’s Brief

The NCBA presents five main points in its brief that have each been addressed in more detail and at length in USDA’s brief. NCBA paraphrases USDA’s first argument that the final rule is based on a thorough assessment of its impacts on human health. USDA Br. at 22-27. NCBA also argues that the District Court ignored the fact that Canada’s incidence rate is below international standards. However, USDA’s Brief contains an entire section, consisting of over two pages, discussing the BSE incidence rate and similar arguments offered by NCBA on the point. USDA Br. at 34-36. Two other arguments offered by NCBA on the sufficiency of Canada’s feed ban and SRM removal as effective mitigation measures are also addressed by USDA. USDA’s Brief provides a lengthy legal argument on Canada’s feed ban and SRM removal as effective mitigation measures. USDA Br. at 27-29 (feed ban) and 23-24 (SRMs). The final point made

by NCBA that mandatory testing is not an effective mitigation measure is also addressed in a specific section by USDA. USDA Br. at 42-43.

Furthermore, half of the cases cited by NCBA are referenced in USDA's brief. In fact, not only does NBCA reference the same cases for the same proposition as USDA, NCBA uses the same quotes from some of the same cases as USDA's brief. NCBA Brief at 13 and USDA Br. at 21 (both quoting the same sentence in *Baltimore Gas & Elec. Co v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983)).

C. Tyson's brief

Tyson also fails to offer any unique perspective from that provided by USDA. Tyson makes three main arguments. Tyson first argues that the District Court did not review the administrative record and failed to defer to agency expertise. Tyson Br. at 8-10. This is USDA's very first argument and Tyson does not offer any new information that would add further support for this argument. USDA Br. at 27 (Secretary's determinations were supported by the record) and 21 (court should defer to agency expertise). As further support for its argument that the agency failed to defer to agency expertise, Tyson discusses the intergovernmental efforts made by APHIS, FISIS and FDA in addressing BSE

risks. Tyson Br. at 13. However, USDA in a much better position to make this point and review the relevant intergovernmental rules, as it did in its brief at 23-24.

The second point Tyson makes is that the District Court treated the adoption of an emergency rule as a longstanding policy and placed a heavy burden on the agency to justify altering the emergency rule. Tyson Br. at 25-28. However, USDA makes this exact point distinguishing the same case cited by Tyson. USDA Br. at 30-31.

The final position that Tyson takes is that the District Court improperly analyzed the public interests. Tyson Br. at 6. Again, Tyson does not provide any different angle on public interests that has not already been alleged by USDA. USDA Br. at 58-60.

D. American Meat Institute's Brief

AMI's brief is redundant and repeats similar USDA arguments. For example, AMI claims that scientific evidence indicates that the continued closure of border is unnecessary. AMI Br. at 14-. Again, this claim is no different than those found in USDA's brief, in fact, AMI references USDA's Brief in support of its arguments made on this point. AMI Br. at 14. Another AMI claim is that the American meat industry will suffer significant injury due to the injunction. AMI

Br. at 21-25. However, AMI's statements simply repeat USDA discussions of the alleged impact on the domestic meat processing industry. USDA Br. at 14-15.

E. Alberta Beef Producers' Brief

ABP claims that the District Court's assessment of R-CALF's likelihood of success on the merits was premised on an erroneous view of USDA's authority under the Animal Health and Plant Act. ABP Br. at 5-6. ABP offers nothing new through this argument because USDA makes this same argument in its Brief. USDA Br. at 20-21.

ABP's next arguments relate to an overstatement of harm by the District Court, i.e. Canada has not had a single case of vCJD and that transmission to humans is rare. Again, USDA has made these same points. USDA Br. at 58. ABP states that there is no evidence of domestic stigma associated with U.S. meat. ABP Br. at 12. USDA makes this exact same exact argument, down to the pages quoted in the Federal Register. USDA Br. at 59-60.

ABP's last point is that the District Court ignored the harm to the artificial inflation in U.S. cost of beef and ignored the effects on the efforts to harmonize the international safety standards for beef. ABP at 14. USDA makes essentially the same argument on the cost of U.S. beef by arguing that the USDA's rule would result in a net benefit to the U.S. economy. USDA Br. at 59. As to international

safety standards, USDA discusses their criteria as well as their importance, and how the rule supposedly comports with these requirements. USDA at 25-26; 38. Furthermore, USDA recognized that it would have to deal with the U.S. trading partners. USDA Br. at 60.

F. Canadian Cattlemen's Association's Brief

CCA also restates other USDA arguments using even some of the same references as USDA for support. For example, USDA's Brief included CCA's arguments there is no evidence to support the District Court's conclusion that reopening the border will cause other countries to close their borders to the U.S. and that stigma will not attach to U.S. meat. USDA Br. at 59, 20. As to CCA's statement that the NEPA claims do not provide a basis for irreparable harm, CCA simply drafts a conclusory statement and then references the sections of USDA's Brief that discuss NEPA. Obviously, CCA has not provided any new information to warrant submitting an *amicus* brief.

G. Government of Canada

The Government of Canada repeats USDA's argument the Canada's risk mitigation measures are protective of human health. Like USDA, the Government of Canada states that Canada has not had a single case of vCJD. Government of Canada Br. at 9-10; USDA Br. at 58. The Government of Canada repetitively

discusses all of the risk mitigation measures that are in place and that were discussed by USDA. Govt. of Canada at 12-17. USDA discusses each and every one of these risk mitigation measures. USDA Br. at 27 (feed ban), 27-28 (surveillance program and epidemiological studies), 39 (removal of SRMs).

The last major point that the Government of Canada makes is that the January 2005 discovery of two confirmed cases does not undermine USDA's rationale. Govt. of Canada Br. at 18-29. Once again, the Government of Canada repeats a point already made by USDA. USDA Br. at 29.

Thus, the arguments made in the proposed *amicus* briefs do not significantly expand upon those issues and arguments already raised in USDA's opening brief, and therefore they would not substantially assist the court. *See Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997) ("The vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigant's briefs, in effect merely extending the length of the litigant's brief. Such *amicus* briefs should not be allowed. They are an abuse."); *Jones v. Roper*, 311 F.3d 923, 927 (8th Cir. 2002); *Abu-Jamal*, 2000 WL 1100784 at *4 ("To the extent that *amici* seek to amplify a claim already presented by petitioner . . . the burden on the court and the parties in terms of additional pages filed and time required to resolve the issues presented likely would outweigh the nominal analytical contribution.").

H. The Proposed *Amici* Also Duplicate One Another's Arguments.

Because the *Amici Curiae*'s arguments are similar to those made by USDA, they are also similar to each other. Most of the briefs make the same arguments that the District Court failed to give adequate deference to USDA's conclusions, that the mitigation measures required by USDA's Final Rule are sufficient to protect U.S. cattle and consumers from BSE, and that the District Court failed to take into account other public interests associated with the rule.

In fact, almost all of the proposed amicus briefs state (and restate) the economic impacts that resulted from USDA's prior decision to ban imports of cattle and most beef products from Canada and that continue today because USDA's Final Rule relaxing that ban has been preliminarily enjoined. While they may come at it from slightly different perspectives, they assert that there is a shortage of cattle available for feeding and slaughtering in the United States as a result of this import ban, and that slaughterhouses and meat processors with facilities in Canada (including, incidentally, many of the proposed *amici*) have access to cheap Canadian cattle and therefore can produce beef at a cost that compares favorably to beef produced from U.S. cattle.

The proposed *amici* are incorrect that the District Court was not presented with these arguments and therefore failed to take them into account in issuing the

Preliminary Injunction.² But in any event, there is no reason why these arguments about the economic effects of continuing the ban on Canadian imports could not have been consolidated for presentation to the Court in response by R-CALF USA. Clearly, the meat packers' briefs provide for the same interests. For example, Tyson references statements from NCBA in support of its arguments. Tyson at 29. Furthermore, USDA recognizes the alleged harm to the meat packing industry in its Brief. USDA Br. at 14-15.

The main complaint offered by the Canadian groups, including ABP, CCA and the Canadian Government, is that Canadian interests, as well as injuries sustained by U.S. meatpackers and others in the beef industry, were not represented to the court in its finding of irreparable injury. (USDA also addressed this issue, stating numerous times that the injunction has strained relations between the United States and Canada. USDA Br. at 15. USDA explains that both Canada and the U.S. have cooperated closely to achieve the shared goal of avoiding the dissemination of BSE, USDA Br. at 15, and that "the Secretary must deal with the

² USDA's economic impact analysis supporting the Final Rule projected substantial financial benefits to meat packers if imports of Canadian cattle were allowed (and export markets were unaffected by those imports). *See* 70 Fed. Reg. at 520. During the hearing on the preliminary injunction, counsel for USDA claimed that the Final Rule would protect economic interests other than those of the cattle producers represented by R-CALF USA, arguing: "Slaughter houses in this country are closing. Meat processing companies have laid off employees. They have suffered concrete, devastating harm compared to the plaintiffs, ..." Transcript at 89.

US trading partners.” USDA Br. at 60. Clearly, ABP, CCA and Canadian Government’s briefs are redundant. At a minimum, these parties should be required to file a joint brief expressing their interests.

II. *Amici* Have Failed To Take Even the Obvious Step of Avoiding Multiple Briefs Where One Proposed *Amicus* Explicitly Represents Another Proposed *Amicus*.

The Advisory Committee Note to Circuit Rule 29-1 admonishes prospective *amici* that they “are encouraged to file a joint brief.” In addition, the Circuit Advisory Committee Note explains that: “*Amici* who wish to join in the arguments or factual statements of a party or other *amici* are encouraged to file and serve on all parties a short letter so stating in lieu of a brief.”

In the instant case, the Court and the parties have been burdened with a large stack of proposed *amicus* briefs where in many cases one of the proposed *amici* is also represented by another of the proposed *amici*. ABP is the largest member of CCA, and ABP acknowledged that it and CCA have common interests in the case. ABP Motion for Leave at 3 n.1. Yet both filed separate briefs because one chose to focus on irreparable injury and one “focuses elsewhere.” *Id.* They do not even assert that their interests conflict or that they could not file a single brief addressing both areas of “focus.”

Easterday is a member of NCBA, and in fact it has attached to its proposed *amicus* brief two documents prepared by or for NCBA. Easterday also is a member of the Washington Cattle Feeders Association, which is another one of the entities submitting the proposed NCBA brief. *See* Addendum to NCBA brief. Tyson is an “Allied Industry Partner” of NCBA,³ and a Tyson Fresh Meats representative is on the Board of Directors of the Washington Cattle Feeders Association.⁴

Tyson also is represented on the Board of Directors of another proposed *amicus*, AMI.⁵ In fact, the Chief Operating Officer of Tyson Foods, Inc. is the Treasurer of AMI.⁶

Pioneer is, on information and belief, a member of the Kansas Livestock Association,⁷ which is one of the entities submitting the proposed NCBA brief. *See* Addendum to NCBA brief.⁸

³ *See* <http://www.beefusa.org/affialliedindustrypartners.aspx>.

⁴ *See* <http://www.wafeeders.org/membership.htm#boardofdirectors>.

⁵ *See* http://www.meatami.com/Content/NavigationMenu/AMIMemberServices/WhoWeAre/BoardofDirectors/Board_of_Directors.htm.

⁶ *See* <http://www.meatami.com/Template.cfm?Section=Officers&Template=/Staff/StaffList.cfm&Officers=Y>.

⁷ *See* <http://www.kla.org/feedmapb.htm>.

⁸ These are just the interrelationships that were apparent from a quick review of publicly available data. R-CALF USA believes that there likely are other examples, as well. (Some entities do not make their memberships or the affiliations of their officers and board members available to the public.)

Thus, it is no wonder that the proposed *amici* make similar and overlapping arguments: ignoring the Advisory Committee Note to Circuit Rule 29-1, multiple proposed briefs were submitted by entities and the trade associations that represent them, and in some cases that they have some control over. In fact, save for Canada and Camelid, every organization proposing to file an *amicus* brief in this case is related to one or more other proposed *amici*.⁹

III. The Proposed *Amicus* Briefs Raise New Issues and New “Evidence”

A. Camelid’s Brief

Camelid’s proposed *amicus* brief asserts that the issues related to BSE in camelids are different from those related to BSE in cattle and that therefore the District Court’s preliminary injunction was overly broad. No entity represented by the Camelid proposed *amicus* brief, nor any other entity, even attempted to argue at the District Court level that a distinction should be made between camelids and

⁹ It also bears noting that the proposed brief filed by National Cattlemen's Beef Association, National Pork Producers Council, and others makes no attempt to explain the interest of proposed *amicus* National Pork Producers Council, contrary to the requirements of Fed. R. App. P. 29. Since their brief claims that the Preliminary Injunction is damaging the United States beef industry, with which it competes, and is increasing the price of beef to U.S. consumers, the only apparent interest of the National Pork Producers Council in overturning the Preliminary Injunction, which appears to favor pork producers, is that some of the largest members of the National Pork Producers Council are believed to also be among the largest companies in the beef industry.

cattle with respect to BSE risk. There is no mention of camelids in USDA's brief in this appeal.

“In the absence of exceptional circumstances, *amici curiae* may not expand the scope of an appeal to implicate issues not presented by the parties to the district court.” *Richardson v. Alabama State Bd. of Educ.*, 935 F.2d 1240, 1247 (11th Cir. 1991) (refusing to consider on appeal defenses that were neither raised in the district court nor argued by the appellants on appeal) (citing *McCleskey v. Zant*, 499 U.S. 467, 523 (1991) (Marshall, J. dissenting) (citing other Supreme Court precedent)). “While an *amicus* may offer assistance in resolving issues properly before the court, it may not raise additional issues or arguments not raised by the parties.” *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 443 (6th Cir. 1998) (*amicus*’ argument, which sought expansion of a rule beyond the scope which plaintiff sought extension, was not considered by the court) (citing First Circuit and D.C. Circuit Court cases); *Russian River Watershed Protection Comm. v. City of Santa Rosa*, 142 F.3d 1136, 1141 & n.1 (9th Cir. 1998) (“We do not review issues raised only by an *amicus curiae*.” (citing to *Swan v. Peterson*, 6 F.3d 1373, 1383 (9th Cir. 1993))); *U.S. v. Gementera*, 379 F.3d 596, 607 (9th Cir. 2004).

Camelid’s brief, which raises only an issue not presented to the District Court and not addressed in USDA's appeal, it is therefore inappropriate and should not be accepted by the Court. If Camelid believes that there are grounds for

excluding camelids from the Preliminary Injunction, the appropriate course of action would be for it to seek a modification of the Preliminary Injunction from the District Court, which it has not attempted to do.

B. AMI's Brief

A large portion of AMI's brief deals with arguments that were not presented at the District Court level. AMI claims that the USDA rule at issue in this case did not go far enough -- that it should have allowed importation of cattle and beef products from Canada regardless of the age of the Canadian cattle involved. *See, e.g.*, AMI brief at 1-2, 9-11, 16-21. AMI also argues that this failure of USDA to go far enough has created and is creating economic hardships for AMI's members. *Id.* at, *e.g.*, 24-25. These arguments were not presented to the District Court, and AMI made no attempt to do so. In fact, AMI acknowledges that it is raising these arguments in another proceeding. *Id.* at 10. This is a classic example of a proposed *amicus* attempting to insert into an appeal issues never raised or considered at the district court level. The same is true of AMI's arguments that USDA's action was required by "international law." *Id.* at 13-14. Because AMI's proposed *amicus* brief consists primarily of new issues not raised below, it is inappropriate and its motion for leave to file the brief should be denied.

C. Attachments to Easterday and AMI Briefs

Easterday and AMI attach documents to their proposed *amicus* briefs, and ask this Court to rely upon factual conclusions and opinions contained in those documents, even though the documents were not part of the administrative record before USDA and are not part of the record at the District Court.

This Court should not consider such new “evidence.” *Wiggins Bros., Inc. v. Dep’t of Energy*, 667 F.2d 77, 83 (Temp. Emer. Ct. App. 1982) (“in the absence of exceptional circumstances, *amicus curiae* is not entitled to introduce additional evidence” not considered by the district court); *Petition of Oskar Tiedemann & Co.*, 289 F.2d 237, 240 n.5 (3d Cir. 1961). Neither Easterday nor AMI attempted to participate in the proceedings below, and even if they had they present no justification for why the District Court could have relied on such extra-record documents. In any event, at this point there is no way for R-CALF USA to critique or respond to these new documents, and this Court should not be burdened with fact-finding proceedings at this stage to determine the reliability of any statements contained in the documents. Should the Court granted Easterday's or AMI's motion for leave to file an *amicus* brief, the Court should strike the attachments to the brief, pursuant to Circuit Rule 28-1.

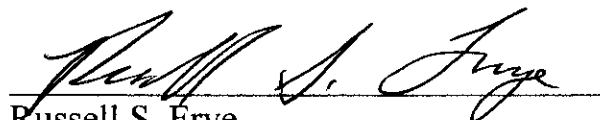
IV. Conclusion.

For the reasons set forth above, R-CALF USA respectfully requests that this Court deny the eight motions to file proposed proposed *amicus curiae* briefs and strike the *amicus* brief of Tyson.. If the Court decides to accept *amicus* briefs from these entities, R-CALF USA respectfully requests that the Court strike the briefs as filed and order the filing of a single *amicus* brief by these entities, or a simple letter saying that they support USDA's arguments, consistent with the Advisory Committee Note to Circuit Rule 29-1.

Additionally, if the Court decides to accept any *amicus* brief or briefs in support of NMA, R-CALF USA asks that it be provided at least seven days to file a short supplemental brief addressing any arguments made by the *amici*. It would be manifestly unfair to require R-CALF USA, within the time limits and word limits provided for responding to USDA's opening brief, also to respond to the over 200 pages of proposed *amicus* briefs. *See* Circuit Rule 28-4, Extensions of Time and Enlargements of Size for Consolidated and Joint Briefing.

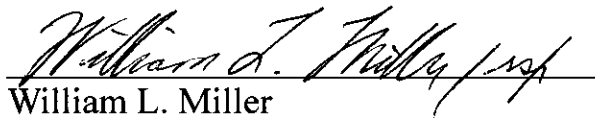
Dated: April 30, 2005

Respectfully submitted,

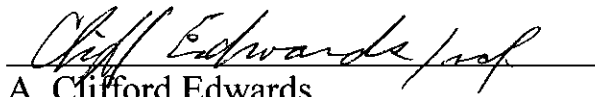


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CERTIFICATE OF SERVICE

I hereby certify that, on the 30th day of May 2005, I have caused a true and accurate copy of the Plaintiff-Appellee's Opposition to Motions to File Briefs as *Amici Curiae* Brief to be served by either U.S. Mail or Federal Express upon:

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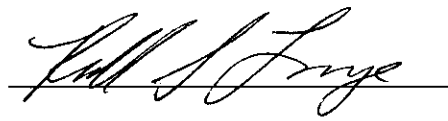
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A handwritten signature in cursive script, reading "Russell S. Frye", is positioned above a horizontal line.

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Via Federal Express

Ms. Cathy Catterson
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

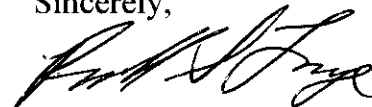
April 30, 2005

Re: *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Department of Agriculture, et al.*, Docket No. 05-35264

Dear Ms. Catterson:

Enclosed for filing please find the original and 4 copies of Appellee/Plaintiff's Opposition to Motions for Leave To File *Amicus* Briefs and Motion To Strike *Amicus* Brief of Tyson Foods, Inc., in the above-captioned appeal. Thank you.

Sincerely,



Russell S. Frye
Counsel for Appellee/Plaintiff
Ranchers Cattlemen Action
Legal Fund United
Stockgrowers of America

cc: Counsel of record
Counsel for proposed *amici curiae*